

Message Text

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SUBJ: AUSTRALIAN LEGAL PROVISIONS GOVERNING MARIHUANA
POSSESSION

REF: STATE 057902

1. UNDER AUSTRALIAN FEDERAL SYSTEM, FEDERAL GOVERNMENT, EACH OF PRINCIPAL TERRITORIES, AND EACH OF SIX STATES HAVE SEPARATE LEGISLATION AND PENALTIES FOR POSSESSION AND TRAFFICKING IN MARIHUANA. THERE IS INEVITABLY CONSIDERABLE VARIATION AMONG THESE EIGHT DIFFERENT STATUTES, AS WELL AMONG ENFORCEMENT POLICIES. THIS TELEGRAM DISTINGUISHES BETWEEN (1) FEDERAL LEGISLATION AND (2) STATE AND TERRITORIAL LEGISLATION AND GENERALLY INDICATES RANGE OF VARIATION AMONG "(2)".

2. FEDERAL JURISDICTION ON MARIHUANA LIMITED TO EXPORT AND IMPORT, POSSESSION ON BOARD SHIP OR AIRCRAFT, AND POSSESSION WHERE THERE IS REASONABLE PRESUMPTION THAT PRODUCT IS IMPORTED. BY CONTRAST, THE STATE AND TERRITORIAL LEGISLATION TYPICALLY COVERS POSSESSION, USE, CULTIVATION, PREPARATION
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AND DEALING, REGARDLESS OF ORIGIN.

3. FEDERAL LEGISLATION. MAXIMUM FEDERAL PENALTIES ARE FINES OF \$4400 AND/OR TEN YEARS IMPRISONMENT. FOR MINOR CASES INVOLVING QUANTITIES OF LESS THAN 25 GRAMS DISPOSED OF IN MAGISTRATES' COURTS, THE MAXIMUM PENALTY IS \$2200 AND/OR TWO YEAR IMPRISONMENT. A CABINET PROPOSAL IS, HOWEVER,

EXPECTED TO BE INTRODUCED INTO PARLIAMENT SHORTLY RAISING THE FEDERAL PENALTIES FOR CANNABIS RESIN AND CANNABIS OIL (NOT LEAF) TO \$110,000 AND/OR 25 YEARS IMPRISONMENT.

4. STATE LEGISLATION. LEGISLATION OF THE TWO MOST POPULOUS STATES, NEW SOUTH WALES AND VICTORIA, COVERS SMOKING, USING, POSSESSION, MANUFACTURE, SUPPLY, SELLING AND OTHERWISE DEALING. THEIR PENALTIES CORRESPOND TO THE FEDERAL PENALTIES, EXCEPT THAT VICTORIA'S PENALTY FOR POSSESSION AND SMOKING IS \$600 AND/OR 12 MONTHS IMPRISONMENT. SOUTH AUSTRALIA AND TASMANIAN LAWS BROADLY RESEMBLE VICGVA LAWS. BUT SOUTH AUSTRALIAN ALSO ADOPTED, WITH FUTURE EFFECTIVE DATE, MUCH MORE SEVERE PENALTIES FOR TRANSACTIONS INVOLVING LARGE QUANTITIES. WESTERN AUSTRALIA HAS ALREADY ADOPTED AND PLACED IN EFFECT A SCALE OF PENALTIES CORRESPONDING CLOSELY TO THOSE NOW PROPOSED FOR INTRODUCTION IN THE FEDERAL PARLIAMENT (PARA 3 ABOVE). QUEENSLAND HAS THE MOST SEVERE STATE LEGISLATION--USE, POSSESSION, SELLING, SUPPLY OR CULTIVATION INVOLVING AMOUNTS IN EXCESS OF 25 GRAMS OR 40 CIGARETTES REGARDLESS OF WEIGHT ARE PUNISHABLE BY A FINE OF \$110,000 AND/OR LIFE IMPRISONMENT AT HARD LABOR.

5. STRICTNESS OF ENFORCEMENT -- GIVEN THE DIVERSITY OF AUSTRALIAN STATE AND FEDERAL JURISDICTION, CONDITIONS AND LAWS, IT IS DIFFICULT TO GENERALIZE. WE UNDERSTAND THAT POLICE FORCES IN ALL JURISDICTIONS TEND TO BE RELATIVELY STRICT IN MAKING ARRESTS WHENEVER VIOLATIONS COME TO THEIR ATTENTION. THERE IS MUCH MORE VARIATION IN PRACTICE RESPECTING PROSECUTION AFTER ARREST. OUR IMPRESSION IS THAT OVERALL ENFORCEMENT IS PROBABLY MORE STRICT IN AUSTRALIA THAN THE AVERAGE OF U.S. PRACTICE, BUT WE COULD NOT DOCUMENT THIS JUDGMENT.

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MENT IS PROBABLY MORE STRICT IN AUSTRALIA THAN THE AVERAGE OF U.S. PRACTICE, BUT WE COULD NOT DOCUMENT THIS JUDGMENT.

6. EMBASSY AIRMAILING CARE OF ERNST S/NM COPY OF MORE DETAILED STATE-BY-STATE TABULATION ON AUSTRALIAN LEGISLATION AND PENALTIES PREPARED AT OUR REQUEST BY AUSTRALIAN NARCOTICS BUREAU.
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